PP

v.

**DATO' SERI ANWAR IBRAHIM;
RE COUNSEL FOR CHRISTOPHER
FERNANDO'S OBJECTION TO
ATTORNEY-GENERAL'S APPLICATION**

HIGH COURT MALAYA, KUALA LUMPUR
HASHIM YUSOFF J
[CRIMINAL TRIAL NO: 45-49-98;
CRIMINAL APPLICATION NO: 44-18-99]
1 MARCH 2002

CONSTITUTIONAL LAW: *Courts - Contempt proceedings - Judge - Representation - Whether Attorney General had locus standi to represent judge - Doctrine of separation of powers - Administration of justice*

CONSTITUTIONAL LAW: *Attorney General - Locus standi - Contempt proceedings - Whether Attorney General had locus standi to represent judge - Doctrine of separation of powers - Administration of justice*

In this application by Mr. Christopher Fernando ('CF'), counsel for Dato' Seri Anwar Ibrahim, to commit YA Dato' Augustine Paul ('learned judge') for contempt, CF had objected to the application by the Attorney General ('AG') to represent the learned judge in these proceedings on the following grounds: (i) that the AG had no *locus standi* to act on behalf of the alleged contemnor; and (ii) that the learned judge should appear in person or get counsel from private practice. CF submitted that if the learned judge was represented by the AG, it would be in conflict with the doctrine of separation of powers since the AG is the legal adviser to the government under art. 145(2) of the Federal Constitution ('FC').

Held (dismissing the objection):

(1) It was clear from the nature and method of appointment and the provision for his remuneration that the learned judge exercised his powers as a High Court judge under the FC and the Courts of Judicature Act 1964. The words being the subject matter of the instant notice of motion were uttered by the learned judge in the course of proceedings of W.P. Criminal Trial No. 45-49-98 (*PP v. Dato' Seri Anwar Ibrahim*)

A and were, therefore, made in the course of his duties as a judge of the High Court. Whether the words were contemptuous and, if so, whether the learned judge could be cited for contempt in his own court were issues to be determined later in these proceedings. For the immediate
B matter at hand, the AG could represent the learned judge in these contempt proceedings. It could not be said that the learned judge had compromised the judiciary by accepting the services of the AG to appear and defend him in these proceedings. Although it was suggested by CF that the learned
C judge should get his own counsel from private practice, if that were to happen, would not the learned judge then be beholden to a member of the Bar and would he not then have compromised his position with a member of the Bar? Since the alleged contemptuous words were said in the course of his
D work, which office is established under the FC, it would therefore be more appropriate for the AG, as the officer under the FC and the Government Proceedings Act 1956, to step in and defend the learned judge, not as a private individual, but in the protection of such office and the institution of the
E judiciary, and in the interest of the administration of justice in this country. The doctrine of separation of powers would not be affected by the AG doing so. (para 13)

Case(s) referred to:
F *AG v. Times Newspaper Ltd [1974] AC* ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 13
Federal Constitution, arts. 97, 122(B), 125(6), 126, 132, 145(2)
Government Proceedings Act 1956, s. 24(2)

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For the applicant - Karpal Singh (Gobind Singh Deo with him); M/s Karpal Singh & Co
For the respondent - Dato' Abdul Aziz Abdul Rahim SFC

Reported by Suresh Nathan

H

JUDGMENT

Hashim Yusoff J:

I

[1] In this application *vide* notice of motion by Mr. Christopher Fernando, counsel for Dato' Seri Anwar bin Ibrahim, filed on 3 October 2001 to commit YA Dato' Augustine Paul for contempt,

counsel for Mr. Christopher Fernando on 18 January 2002 had objected to the learned Attorney-General's application, by notice of motion filed on 14 January 2002, to represent YA Dato' Augustine Paul in these proceedings on the following grounds: A

1. that the Attorney-General has no *locus standi* to act on behalf of the alleged contemnor; B

2. that YA Dato' Augustine Paul should appear in person or get a counsel from the private practice.

[2] Mr. Karpal Singh on behalf of Mr. Christopher Fernando, submitted that if the judge is represented by the Attorney-General, it would be in conflict with the doctrine of separation of powers since the Attorney-General is the Legal Adviser to the Government under art. 145(2) of the Federal Constitution. C D

[3] It was further submitted that the Attorney-General can only represent someone who is a "public officer", which definition under art. 132 of the Federal Constitution does not include members or judges of the judiciary. Therefore counsel submitted, YA Dato' Augustine Paul should get his own private counsel. E

[4] Reference was also made to the 1988 Constitutional crisis in the removal of the then Lord President, Tun Mohd. Salleh b. Abas whereby a tribunal was set up under art. 125 of the Federal Constitution and wherein Tun Mohd. Salleh was not given any assistance by the Attorney-General then. F

[5] Further submission was put forth by Mr. Gobind Singh Deo on behalf of Mr. Christopher Fernando that the Attorney-General has no automatic right of audience since it is not provided for under art. 145 of the Federal Constitution. It was also submitted that apart from art. 145 of the Federal Constitution, only s. 24(2) of the Government Proceedings Act confers the Attorney-General the right to represent a public officer in civil proceedings and since contempt proceedings are not civil in nature therefore the Attorney-General should have no right to represent YA Dato' Augustine Paul. G H

[6] Mr. Christopher Fernando also submitted that by accepting the services of the Attorney-General, Justice Dato' Augustine Paul has compromised the judiciary by being beholden to the Attorney-General. He even went to the extent of saying that Dato' I

A Augustine Paul may even have committed a corrupt practice under the Emergency Essential Ordinance 1952 by using his public office for his pecuniary or other advantage.

[7] In his reply Senior Federal Counsel Dato' Abdul Aziz bin
B Abdul Rahim on behalf of the Attorney-General submitted that the only statutory powers regarding contempt are found in art. 126 of the Federal Constitution and s. 13 of the Courts of Judicature Act 1964. However, the right of the Attorney-General to appear in contempt proceedings are provided under the common law.

C **[8]** Reference was made to the case of *AG v. Times Newspaper Ltd.* [1974] AC where Lord Reid at p. 293 para G said – "It is therefore up to the Attorney-General to decide whether it is in the public interest that the Attorney-General should act. It is not to
D protect the private rights of parties but rather, to prevent interference with the administration of justice."

[9] Dato' Abdul Aziz then submitted that if the Attorney-General can bring contempt proceedings in order to protect the system of justice, therefore it is also the duty of the Attorney-
E General to stop any attempt to bring any contempt proceedings which does not disclose any *prima facie* contempt. Further it was submitted that the Attorney-General is not returning any favour to Justice Dato' Augustine Paul. The Attorney-General is merely appearing in order to protect the institution of the judiciary since
F a judge of the High Court is appointed by the Yang diPertuan Agong under art. 122(B) of the Federal Constitution and therefore it follows that any attack on that high office will be the duty of the Attorney-General to defend it.

G **[10]** Without doubt any application to cite a judge of the High Court in this country for contempt will certainly be a matter of public interest and particularly so in the legal fraternity.

[11] It is not disputed that the definition of the words 'public
H office' under art. 132 of the Federal Constitution does not include the office of the High Court judge as such. So what is the office of the High Court Judge? I posed this question to Mr. Gobind Singh Deo and he himself admitted he was not sure and therefore could not reply.

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[12] As submitted by Dato' Abdul Aziz, the High Court Judge is appointed by the Yang diPertuan Agong on the advice of the Prime Minister and after consultation with the Conference of Rulers under art. 122(B) of the Federal Constitution. Further, under art. 125(6) of the Federal Constitution, Parliament shall by law make provision for the renumeration of judges of the Federal Court which shall be accountable to the Consolidated Fund. By virtue of para (9) of the same article, the same provision applies to judges of the High Court. Article 97 of the Federal Constitution provides that all monies and reserves received by the Federation shall be paid into and form a consolidated fund, which is called the 'Consolidated Fund'.

[13] It is clear from the nature and method of appointment and the provision for his renumeration that Dato' Augustine Paul exercises his powers as a High Court judge under the Federal Constitution and the Courts of Judicature Act. The words being the subject matter of the instant notice of motion were uttered by YA Dato' Augustine Paul in the course of the proceedings of WP Criminal Trial No. 45-49-98 *(Pendakwa Raya v. Dato' Seri Anwar Ibrahim)*. It is therefore done in the course of his duties as a judge of the High Court. Whether the words are contemptuous and if so, then whether YA Dato' Augustine Paul can be cited for contempt in his own court are issues to be determined later in these proceedings. For the immediate matter at hand, I cannot agree with the argument that the Attorney-General cannot represent YA Dato' Augustine Paul in these contempt proceedings. It cannot be said that YA Dato' Augustine Paul has compromised the judiciary by accepting the services of the Attorney-General to appear and defend him in these proceedings. It was suggested by counsel for Mr. Christopher Fernando that the judge should get his own counsel from the private practice. If that were to happen will not YA Dato' Augustine Paul then be beholden to a member of the Bar? Would he then have not compromised his position with a member of the Bar? Since, as I stated earlier, the alleged contemptuous words were said in the course of his work, which office is established under the Federal Constitution, therefore it would be more appropriate, and in fact if I may add, proper for the Attorney-General as the officer under the Federal Constitution and the Government Proceedings Act to step in and defend the judge not as a private individual but in the protection of such office and the institution of the judiciary and in

A the interest of the administration of justice in this country. I cannot see how it would affect the doctrine of separation of powers by the Attorney-General doing so.

[14] The tribunal proceedings resulting in the removal of the
B former Lord President Tun Mohd. Salleh b. Abas cannot be equated with the present contempt proceedings as the facts are different. In the tribunal the Attorney-General was already acting for the prosecution. So how could he be acting for the defence?

C **[15]** I need to add that at the end of his submission however, Mr. Karpal Singh admitted that he did not really object to the Attorney-General intervening and to be heard but that his objection was for the Attorney-General to defend YA Dato' Augustine Paul. With respect, as I said earlier, the Attorney-
D General's application to represent YA Dato' Augustine Paul in these proceedings is not to defend him as a private individual, but rather to defend the office which YA Dato' Augustine Paul holds. I cannot but say that in these proceedings the position of YA Dato' Augustine Paul and that of a High Court Judge is one and
E the same. It is not a case of Dato' Augustine Paul committing any known felony as distinctly defined by the Penal Code or any other statutory provisons. Here it is alleged that YA Dato' Augustine Paul committed contempt which is still to be determined. Rather, more importantly is the issue whether a High Court judge can be
F committed for contempt in his own court in the first place. Since the learned Attorney-General feels, as submitted by Dato' Abdul Aziz, that no *prima facie* contempt has been established by the words uttered by YA Dato' Augustine Paul in the course of the criminal trial before him, then I see no reason why the Attorney-
G General cannot step in to defend the office of the High Court judge and prevent interference with the system of justice in this country.

[16] For the above reasons I would dismiss the objection raised by counsel for Mr. Christopher Fernando and accordingly allow
H prayer (1) of the Attorney-General's application to appear as counsel for YA Dato' Augustine Paul.

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